

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI)	
ex rel. DARNELL CLEMONS,)	
Relator.)	
)	
v.)	Cause No. SC85555
)	
THE HON. MAURA McSHANE)	
CIRCUIT JUDGE FOR THE 21 st)	
JUDICIAL CIRCUIT,)	
Respondent.)	

ORIGINAL PETITION FOR WRIT OF PROHIBITION IN THE MISSOURI
SUPREME COURT
FROM THE JUVENILE DIVISION OF
THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, MISSOURI
THE HONORABLE MAURA McSHANE, JUDGE

RELATOR'S REPLY BRIEF IN SUPPORT OF HIS PERMANENT WRIT OF
PROHIBITION

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JURISDICTIONAL STATEMENT, TABLE OF AUTHORITIES AND

STATEMENT OF FACTS

Relator adopts jurisdictional statement, table of authorities and statement of facts set forth in his substitute brief previously filed in this cause, and incorporates them herein by reference with no new additions.

POINTS RELIED ON

I. Relator is entitled to an order prohibiting Respondent from finding him competent to proceed, because such a finding is an abuse of discretion in that there is no substantial evidence to support it, is based on the Court's speculation about a single observed communication between Relator and his counsel, and does not take into consideration Relator's abilities to understand or appreciate the nature of the proceedings against him.

ARGUMENT

I. Relator is entitled to an order prohibiting Respondent from finding him competent to proceed, because such a finding is an abuse of discretion in that there is no substantial evidence to support it, is based on the Court's speculation about a single observed communication between Relator and his counsel, and does not take into consideration Relator's abilities to understand or appreciate the nature of the proceedings against him.

In its brief on this issue, Respondent raises one new point. Respondent argues that the issue in a certification hearing is the juvenile's amenability to treatment in the juvenile system. It involves consideration of the juvenile's age, treatment needs and treatment services available to a juvenile or family court. With these statements, Relator agrees.

Respondent further notes, that any delay in the proceedings could cause the juvenile to have no treatment options in the juvenile system, because of Relator's age. Relator notes that the Juvenile Officer has already filed a "Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law" (Ex. A, p. A-3). Relator can only assume that the Legal Officer intends to present evidence at such a hearing, and argue to the Court that Relator meets the criteria of Section 211.071 RSMo, which permits him to be prosecuted under the general law as an adult upon dismissal of the proceedings in Family Court. Thus, if certification is ordered at the request of the Legal Officer, Relator

will not receive any treatment or programs in Family Court anyway. Such a result is very likely, given the serious charges pending against Relator and his history of past referrals.

Respondent further argues that if Relator is permitted to challenge issues other than jurisdiction, then the practical effect of such a challenge is undesirable in that it might cause delay, deprive the juvenile of treatment options, or overburden appellate courts.

This argument simply does not address the constitutional issues of Relator's competency to proceed. The logical thrust of Respondent's argument is that due process must give way to considerations of judicial efficiency and the fear of overburdening appellate courts. This is simply not what the law and the constitution requires.

Further, this situation is not likely to recur often. There is little, if any, risk of taxing overburdened courts or systematically depriving juveniles of services. In Relator's Brief, he laid out at length the many ways in which he is limited intellectually and developmentally far below the vast majority of his peers; failure of this Court to set aside the order finding Relator competent to proceed will deprive Relator of his rights under the Due Process Clause of the United States Constitution and result in irreparable harm to him, for the reasons and authorities already stated in his Brief.

II. CONCLUSION

WHEREFORE, for the reasons set forth in Points I, II and III of his Brief and Reply Brief, both cumulatively and individually, Relator, prays this Honorable Court make permanent its preliminary writ of prohibition, staying any further proceedings in the underlying cause, In the Interest of D.C., Cause No. 114007, St. Louis County Family Court.

Respectfully submitted,

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Certificate of Service

I certify that a true copy of the above and foregoing was served on all of the following parties by US Mail, postage pre-paid, this _____ day of December, 2003.

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Pursuant to Rule 84.06, counsel certifies that this brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 (b). Based upon the information provided by undersigned counsel's word processing program, Microsoft Word 2000, this reply brief contains 201 lines of text and 979 words. Further, a copy of Relator's brief on floppy disk accompanies his written brief and that disk has been scanned for viruses and is virus-free as required by Missouri Supreme Court Rule 84.06.

Respectfully submitted,

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